WP(C) 2879/2005
BEFORE
HON'BLE SMT JUSTICE A.HAZARIKA

Heard Mr.R.P.Kakati learned counsel appearing for the petitioners. Also heard Mr A.Deka learned Standing Counsel Education Department appearing for respondent Nos.1,3 and 5. Also heard Mr S.C.Biswas learned counsel for respondent No.6. None appeared for respondent Nos. 2 and 4.

2. This application under Article 226 of the Constitution of India has been filed for a direction to the respondents, more particularly respondent No.5 to cancel the list of incumbents of Kharupetia College dated 17.2.2005 for payment of arrear money and to prepare a correct list of incumbents of the said college for payment of arrear money for the period from 25.3.98 to 28.2.99 as per the sanction of the arrear bills of Kharupetia College by Finance(Budget)Department, Government of Assam.

3. In a nutshell, the petitioners case is that all the petitioners are lecturers of various departments of Kharupetia College Darrang, Assam. Vide notification dated 20.8.98 the Government of Assam has taken over 19 colleges under deficit system of grants-in-aid w.e.f. 25.8.98. By virtue of the above notification Kharupetia college(Arts) was also taken over by the Govt. of Assam under deficit system of grants-in-aid scheme. Pursuant thereto by office order vide Memo dated 26.2.99, the post of the lecturers of various departments of the colleges were provisionally approved w.e.f. 25.3.98 or thereafter. After taking over 19 colleges under deficit system of grants-in-aid, the Government of Assam had started to pay regular salaries from 1.4.99 to the teaching and non-teaching staffs of the aforesaid 19 colleges. However, the salaries and other allowances of these staffs of 19 colleges became arrear from 25.3.98 to 28.2.99. In this regard, the authority of the Kharupetia college had submitted an arrear bill of Rs.26,50,441 of the teaching and non-teaching staff for the period from 25.3.98 to 28.2.99 and submitted the bills to the appropriate authority. The other 18 colleges also submitted their respective bills for the aforesaid period. Vide W.T.Message dated 8.2.05, the Deputy Secretary to the Government of Assam, Finance(Budget) Department has sanctioned Rs. 5,10,24,502/-(Rupees five crore ten lakhs twenty four thousand five hundred and two only) for the payment of arrear under the deficit grants-in-aid to 19 colleges including the Kharupetia College w.e.f 25.3.98. Out of the aforesaid amount, Rs. 26,50,441/- had been sanctioned for Kharupetia College. By a communication dated 10.2.05, the Director of Higher Education, Assam was informed by the Deputy Secretary, Govt. of Assam, Education Department(Respondent No.3) regarding the sanction of arrear under deficit grants-in-aid to 19 colleges taken over from 25.3.98 and also directed him to issue necessary Treasury wise allotment in a single letter along with list of incumbents to concerned Treasury Officer. Pursuant to the aforesaid direction, the Director of Higher Education i.e. Respondent No.5 had prepared a fresh list of the incumbents(both teaching and non teaching) on 17.2.05, including therein the name of respondent No.6 at Serial No.1 showing an arrear payment of Rs.6,99,971/-against him. However, in the original bill, as well as in the list of incumbents submitted earlier, the name of respondent No.6 was not included and thereby violating all the norms to be followed by the Government while sanctioning arrear salary, the respondent No.5 has deducted a huge amount of money for disbursal of the aforesaid amount to respondent No.6. from the due arrear salaries of the petitioners. The illegal deduction made by the respondents from the petitioners is shown at para-9 of the writ petition. The same is quoted hereinbelow:

SLNo.	Name of the incumbent	Amount shown in the list to be paid in Rs	Actual amount sanctioned by the Finance Department(in Rs)
1	Abdul Karim	79,663/-	1,16,510/-
2	Jalaluaddin Ahmed	79,663/-	1,16,510/-
3	Bhupendra Nath Bora	79,663/-	1,16,610/-
4	Abdur Rahman	79,663/-	1,16,610/-
5	Smti Aparajita Devi,Lecture	79,663/-	1,16,610/-

6	Sri JM Devsarma,Li-brarian	79,663/-	1,16,610/-
7	Sri Parumal Kr Dutta	30,000/-	30,000/-
8	Abdul Hannan	79,663/-	1,16,610/-
9	Sikdar A Islam	79,663/-	1,16,610/-
10	Abal Begum Ahmed	79,663/-	1,16,610/-
11	Sri Rupjyoti Prasad Dutta	63,060/-	63,060/-
12	Nurul Islam	79,663/-	73,570/-
13	Jahider Sultana	79,663/-	1,16,610/-
14	Aman Ara Begum	79,663/-	1,16,610/-
15	Md.Imran Ali	79,663/-	1,16,610/-

4. The petitioners further case is that the respondent No.6 had joined th e Kharupetia college on 10.9.2002 and prior to joining in the college he was pr acticing Advocate at Mangaldoi. Therefore he is not entitled to get the arrear p ayment for the period from 25.3.98 to 28.2.99 and his bill was not submitted alo ng with the bills of the petitioners as stated herein above and the Finance (Bud get) Department of the Govt. of Assam has not sanctioned yet the arrear dues of the respondent No.6 for the aforesaid period. The sanctioned amount of Rs.26,50, 441/- being deposited in the Bank account of Kharupetia College for disbursement of the same as per the list of the incumbents dated 17.2.05 issued by the respo ndent No.5, apprehending that the amounts shown against the respondent No.6 may be illegally disbursed to him, causing irreparable loss to the petitioners, they , finding no other alternative have filed this instant petition before this Cour t with the aforesaid prayer.

5. The writ petition being moved on 12.4.05, this Court while issuing rule passed interim order to the following effect:

in the meantime , there shall be no disbursement of arrear salary as pe r the list of the incumbents of the Kharupetia College dated 17.2.05(annexure F to the writ petition) .

6. An affidavit in opposition has been filed by the respondent No.5 contend ing interalia that pursuant to a General Instruction issued by Finance(Budget) d epartment dated 12.8.99, the Directorate had released the entire salary to the respondent No.6 . Relevant para 4 of the aforesaid affidavit, is quoted herein below:

That the deponent begs to state that the Govt. of Assam, Education(Plan ning) Department vide office letter No.PNA(H)/82/2004/337 dated 10.2.2005 releas ed an amount of Rs.5,10,24,502/-(Rupees Fife Crore Ten Lacs Twenty Four Thous and Five Hundred and Two) for payment of Arrear Salary to 19 Nos.of deficit coll eges of the State including the Kharupetia College (under Plan), (Now Provincial ised) during the year 2004-05 w.e.f. 25.3.1998.

However, it appeared from the claim submitted by the Principal-cum- Secr etary of the Kharupetia College that, their arrear claims comes to Rs30,04,376/- and out of which an amount of Rs. 26,50,441/- have been released alongwith the arrear salary of Rs.6,99,971/- in respect of Md.BM Hamidur Rahman, retired Princ ipal of Kharupetia College. In this connection the deponent states that, vide l etter No.BB.85/98/124 dated 12.8.99, the Finance (Budget) Department has issued a General instruction to release the arrear salary in respect of the retired/ex pired employees. As such , on the basis of the said letter the Directorate had released the entire salary in respect of Md.B.M.Hamidur Rahman, retired Princip al of Kharupetia College. The remaining amount of Rs 3,53,935/- could not be rel eased to Kharupetia College at that time due to shortage of fund. The deponent f urther states that the said amount sanctioned to the said college will be releas ed as soon as the Government releases the same.

7. On the other hand, an affidavit-in-opposition has been filed on behalf o f the respondent No.6, contending therein that pursuant to the judgment and orde r dated 2.9.02 passed by this Court in C.R.No.3808/97, whereby the petitioner wa s directed to be reinstated in his post, the court left with the authority regar

ding the claim of the arrear salary and accordingly, the respondent No.6 has submitted a representation dated 31.10.03 alongwith the statement of pay allowance from the month of March, 1998 to February, 2003 for payment of arrear salary. The respondent No.6 has also filed an additional affidavit stating therein that he had retired from service on 31.3.05 on attaining the age of superannuation and therefore in consideration of his date of retirement the respondent No.5 i.e. Director of Higher Education, Assam sanctioned and approved the release of arrear due amount and accordingly the arrear due amount of the respondent No.6 was disbursed to him.

8. Mr Deka, learned Standing Counsel has produced the relevant record of the case before this Court. On perusal of the same, nowhere I have found that the representation submitted by respondent No.6 has been disposed of by the authority as well as the amount due to him as alleged, has been sanctioned by the Finance Department. Not to speak of sanction by the Finance Department, no where I have found that the proposal was sent by the respondent No.5 to the respondent No.1 for sanctioning the proposal for payment of arrear dues to respondent No.6, which was ultimately to be sanctioned by the Finance Department. More so, the contention of the respondent No.5 is also not wholly correct, inasmuch as, respondent No.6 had retired on 31.3.05 and the aforesaid amount of the petitioners arrear salaries was sanctioned on 8.2.05. Therefore, prima-facie, the amount released in favour of the petitioners were never meant for making payment to respondent No.6 as he retired only on 31.3.05 .Therefore, I am definitely of the view that the respondent No.5 favoured respondent No.6 by releasing the amount without any authority of law and without proper sanction of that amount from the authority concerned.

9. In view of the above findings, the petitioners should not be allowed to suffer for the uncalled for payment made to respondent No.6 by debiting their due claim over the bills passed in favour of the petitioners. In my considered view this is not fair and by this act the petitioners are being unnecessarily harassed.

However, I am not going to pass order for recovery of the amount from respondent No.6 as it is submitted that the respondent No.6 has already retired and the amount has already been disbursed to him

10. In view of the above position, the respondent No.5, i.e. Director of Higher Education, Assam is hereby directed to compensate the amount debited from the amount due to the petitioners in order to make payment to the respondent No.6, Ex-Principal of the College by submitting a fresh proposal to the Finance Department, Government of Assam for sanctioning the amount so debited from the amount sanctioned already in favour of the petitioners.

11. This direction shall be complied with by the respondent No.5 within a period of three weeks from the date of receipt of a certified copy of this order. It is further directed that the respondent No.1, i.e. Secretary, Education Department shall take necessary steps for sanctioning the deficit amount due to the petitioners by acting upon the proposal to be forwarded by respondent No.5.

12. The respondent No 5 is further directed to complete the whole exercise regarding payment of entire arrear amount to the petitioners as per sanction order within three months from today.

13. With the aforesaid direction the writ petition is allowed. However, taking into consideration of the facts and circumstances of the case there shall be no order as to cost.